

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



JEMAL'S BOULEVARD, LLC,

Plaintiff,

v.

22-CV-193 (JLS) (HKS)

DICK'S SPORTING GOODS,

Defendant.

DECISION AND ORDER

Plaintiff Jemal's Boulevard, LLC, commenced this action on March 9, 2022 alleging claims for breach of contract arising out of a commercial lease. Dkt. 1. The case was referred to United States Magistrate Judge H. Kenneth Schroeder, Jr. for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 10.

On June 20, 2023, Defendant moved for summary judgment. Dkt. 36. Plaintiff responded in opposition to Defendant's motion, Dkt. 39, and Defendant replied. Dkt. 40. On November 13, 2023, Judge Schroeder issued a Report, Recommendation, and Order ("R&R"), recommending that this Court deny Defendant's motion for summary judgment. Dkt. 41. He further recommended that "[D]efendant be ordered to show cause why summary judgment should not be granted to Plaintiff on its breach of contract claim." *Id.* at 1.

On November 27, 2023, Defendant objected to the R&R. Dkt. 42. Defendant requests that this Court "sustain [Defendant's] objections to the R&R and grant summary judgment in [Defendant's] favor as to (i) [Defendant's] Counterclaim for

Declaratory Relief Regarding Abatement and (ii) [Defendant's] First, Fourth, and Fifth Affirmative Defenses; and against [Plaintiff] as to (iii) [Plaintiff's] Claim or Breach of Contract, and (iv) all of [Plaintiff's] Affirmative Defenses." *Id.* at 8. Plaintiff responded in opposition to Defendant's objections, Dkt. 44, and Defendant replied. Dkt. 45.

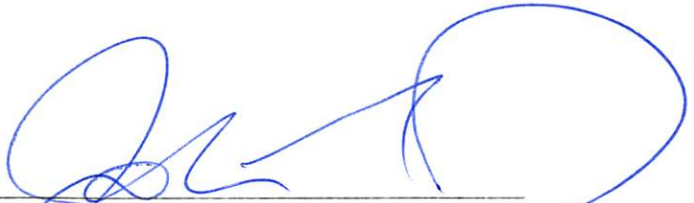
A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

This Court carefully reviewed the R&R, the objections briefing, and the relevant record. Based on its *de novo* review, the Court accepts and adopts Judge Schroeder's recommendation.

For the reasons discussed above and in the R&R, this Court DENIES Defendant's [36] motion for summary judgment. In addition, Defendant is ORDERED to show cause as to why summary judgment should not be granted to Plaintiff on its breach of contract claim.¹

SO ORDERED.

Dated: January 8, 2024
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE

¹ Rule 56(f)(1) of the Federal Rules of Civil Procedure permits the Court to “grant summary judgment for a nonmovant” after “giving notice and a reasonable time to respond.”